

REMARKS

Claims 100-125 are pending in the present application. In the Office Action dated April 26, 2004. The Examiner rejected claims 100-105, 110, 115 and 119-125 under 35 U.S.C. 102(e) as being anticipated by Hsu et al. (US 6,380,637). Claims 106-109, 111-114 and 116-118 WERE rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu et al.

Applicants respectfully submit that the Examiner has examined the wrong independent claim (a claim that has been canceled) although the Examiner has referred to the correct pending claim by number. More specifically, the present application was subject to in a restriction requirement dated December 3, 2003, in which claims 1-33, 48-52, 56-58 and 100-125 were grouped into the invention of Group A. In response to the restriction requirement filed on February 3, 2004, Applicant specifically elected only claims 100-125 for examination as a subset of the claims in Group A and cancelled claims 1-99. While the instant Office Action acknowledges that only claims 100-125 are under examination, the Examiner has, in-fact, examined originally submitted claim 1 as the base claim, instead of claim 100. In particular, cancelled claim 1 reads as follows:

1. A system for distribution of energy to portable hydrogen fuel cell powered devices, comprising:
  - (a) at least one station including:
    - (i) an **external port** coupled to an external port controller and a water supply;
    - (ii) an **external port controller** connected to an electricity supply grid, wherein such port controller controls the flow of electricity through the external port;
  - (b) an **internal port** mounted on a hydrogen fuel cell powered device for receiving electricity and water to be utilized by the an onboard fuel plant of the device to produce hydrogen fuel;
  - (c) an **internal controller** carried on the device for controlling aspects of the supply of electricity and water to the device; and
  - (d) a **connector for coupling** the external port of the station to the internal port of the device for the supply of electricity and water therebetween under the control of the external port controller and/or the internal controller.

In contrast, base claim 100 reads as follows:

100. A system for distributing energy comprising:
  - (a) a station including:
    - (i) a first port for **coupling to a supply of water or fluid constituents of water;**

- (ii) a **first port controller coupled to the first port** for connecting to an energy supply source **for controlling the flow of energy** through the first port;
- (b) a hydrogen fuel cell device including:
  - (i) a second port for **coupling** the first port to the device;
  - (ii) an on-board fuel plant capable of **selectively coupling** to the second port for storing and/or producing hydrogen fuel using electricity and water supplied thereto;
  - (iii) a second controller coupled to the on-board fuel plant; andone of the first port controller and the second controller **for controlling an aspect of the exchange of one of electricity, water and fluid constituents of water with device.**

As highlighted in **bold**, independent claim 100 differs in several respects from canceled claim 1. For example, claim 100 indicates that the exchange includes “water or fluid constituents of water” (*i.e.*, hydrogen and oxygen). Claim 100 also clarifies the definition of the ports and removes the recitation of a “connector” element. Claim 100 further recites that the ports can be “selectively coupled”, (*i.e.* to exchange some or all of the claimed electricity, water or fluid constituent of water). Claim 100 further recites the elements being “coupled” or “coupling” with respect to the ports and controllers, for example, the first port can now be coupled to water or to supply of a fluid constituent of water (*e.g.* can be coupled to hydrogen for example). Claim 100 thus defines a different invention than original claim 1..

To illustrate that the Examiner has examined claim 1 instead of claim 100, the Examiner states in the Office Action that::

Hsu et al teaches a system and method for off-board station and an electricity exchanging arrangement suitable for use with a mobile vehicle powered system comprising:

**Claims 100- and 122-125**

- (a) at least one station including:
  - (i) an external port coupled to an external port controller and a water supply; (column 3, lines 62-65; column 8, line 66-column 9, line 7)
  - (ii) an external port controller connected to an electricity supply grid, wherein such port controller controls the flow of electricity through the external port; (column 8, line 66- column 9, line 7)
- (b) an internal port mounted on a hydrogen fuel cell powered device for receiving electricity and water to be utilized by the an onboard fuel plant of the device to

produce hydrogen fuel; (column 3, lines 62-65; column 4, line 36-46; column 8, line 66-column 9, line 7)

(c) an internal controller carried on the device for controlling aspects of the supply of electricity and water to the device; (column 11, lines 60-65; column 14, lines 56-58) and

(d) a connector for coupling the external port of the station to the internal port of the device for the supply of electricity and water therebetween under the control of the external port controller and/or the internal controller. (column 2, line 28-column 4, line 46; column 5, lines 30-39; column 8, line 66- column 9 line 7; column 13, lines 35-44).

It is clear from the rejection that the Examiner has compared the Hsu reference to original claim 1, not to pending claim 100. Claims 100-125 were particularly selected by the Applicants for examination at least in part because Applicants became aware of Hsu as a result of the Office Action dated May 16, 2003 in which original claim 1 was rejected over Hsu. The present Office Action is substantially identical to the Office Action dated May 16, 2003 with respect to the Hsu reference. Because claim 1 has been examined again, no progress has been made in prosecution of the presently claimed aspects of the invention. Applicant cannot formulate a meaningful reply to the present Office Action with respect to claim 100 (or to the combination of claim 100 with the remaining elements recited in dependent claims 102-125) because claim 100 has not been examined.

Therefore, Applicants Petition the Patent Office for a proper examination of pending claims 100-125 and issuance of a new - non-final Office Action - or a Notice of Allowance should the Examiner find claim 100 to be in condition for allowance. The undersigned believes that no fee is required for this Petition because the present response is a substantive reply to an erroneous Office Action. Should a fee be required, the Patent Office is authorized to withdrawal the necessary fee from our Deposit Account No. 50-1266.

Respectfully submitted,

DORSEY & WHITNEY LLP



Mark W. Roberts, Ph.D.  
Registration No. 46,160  
Telephone No. (206) 903-8728

MWR:clr

Enclosures:

Postcard

Fee Transmittal Sheet (+ copy)

DORSEY & WHITNEY LLP  
1420 Fifth Avenue, Suite 3400  
Seattle, WA 98101-4010  
(206) 903-8800 (telephone)  
(206) 903-8820 (fax)

h:\ip\documents\clients\general hydrogen\501065.01\501065.01 amendment 042604 oa.doc